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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE SALE AND  
TRANSITION BY ARIZONA PUBLIC SERVICE  
TO ELECTRICAL DISTRICT NO. 3 OF  
CERTAIN ELECTRICAL FACILITIES IN PINAL  
COUNTY PURSUANT TO A.R.S. 40-285(A)  
AND FOR DELETION FROM ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY CERTAIN AREAS OF PINAL  
COUNTY

DOCKET NO. E-01345A-08-0426

**PINAL ENERGY'S REPLY TO APS  
AND ED3**

1 Pinal Energy LLC ("Pinal Energy") hereby replies to the October 28, 2009, "Joint  
2 Response of Arizona Public Service Company and Electrical District No. 3 of Pinal County in  
3 Opposition to Motions of Pinal Energy to Intervene Out-of-Time and to Reopen Record."  
4 (Arizona Public Service Company and Electrical District No. 3 of Pinal County will be referred  
5 to individually as "APS" and "ED3" and jointly as the "Applicants." Their October 28, 2009,  
6 pleading will be referred to as the "Response.")

7 **I Applicants Failed to Serve Their Response on Pinal Energy**

8 Applicants inexplicably failed to serve a copy of their Response on counsel for Pinal  
9 Energy. The Response was docketed on Wednesday, October 28, 2009, but counsel did not  
10 receive a copy until Monday, November 2, 2009, when APS belatedly e-mailed him a copy.

11 **II Pinal Energy's Delay in Moving to Intervene is Understandable**

12 Both Staff and Applicants labored to establish the "extraordinary measures" taken to  
13 notify "affected customers" of the proposed transaction. Their labors fell short for two reasons.

Arizona Corporation Commission

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1        First, as Pinal Energy stated in its Motion to Intervene, it is not an APS customer. Thus it  
2 would not have received mailed notices provided to customers or property owners in the affected  
3 area.

4        It is disingenuous at best to try to lay off responsibility for the newspaper notices on the  
5 Commission as "Commission-approved." The Commission did specify the language of the  
6 notice, but the language was based on what was disclosed in APS' application. Further, the  
7 Commission did not specify which newspaper to use for publication. It was Applicants' decision  
8 to publish notices in the *Maricopa Monitor* and the *Casa Grande Dispatch General*, instead of a  
9 more widely-read publication. Notices provided in these two tiny newspapers were hardly  
10 sufficient to alert all parties that might have an interest in this matter.

11        Second and more importantly, neither the notices nor the application disclosed that a  
12 fundamental part of the transaction was the new electricity requirements contract, whereby APS  
13 would be supplying most of ED3's electricity needs. It is true that the requirements agreement  
14 did not require Commission approval, but it was the elephant in the room that neither of the  
15 Applicants wanted to talk about.

16        It was only when its electricity rates began to skyrocket as a result of the requirements  
17 contract that Pinal Energy became aware of the effects of the elephant and began to investigate  
18 how it go there. Before that time, Pinal Energy had no interest at all in whether ED3 was going  
19 to get 4,000 new electric customers from APS. Now, residential customers are also seeing the  
20 elephant and beginning to complain.

21        If Pinal Energy had been timely provided a notice that its electric rates would skyrocket  
22 as a result of the overall APS/ED3 agreement — APS agrees to transfer 4,000 customers to ED3  
23 and ED3 agrees to a new APS requirements contract — Pinal Energy would certainly have  
24 moved earlier to intervene. If residential customers and the Town of Maricopa had been  
25 provided the same notice, the Commission would likely have seen additional interventions.

1   **III    The Commission Should Look Hard at the Effects of the APS Requirements**

2       **Contract**

3       Applicants seek to narrowly prescribe the Commission's scope of review in this docket.  
4   It is true that the Commission cannot alter the terms of the requirements contract. However, it is  
5   also true that the Commission does not have to approve a transaction where 4,000 existing APS  
6   customers would become saddled with the requirements contract.

7       First, in evaluating whether to approve a transaction, the Commission needs to determine  
8   whether the transaction is in the public interest. The "public" is not narrowly limited to those  
9   directly involved with the transaction. If another member of the public such as Pinal Energy is  
10   being harmed by the transaction, then that member has sufficient interest in the proceeding to  
11   justify intervention.

12       Second, the transaction, including the requirements contract, affects not only Pinal  
13   Energy, but also the financial health of its electricity supplier: ED3. Pinal Energy raised  
14   concerns in its Motions — sniffed at by Applicants — about how the new APS power contract  
15   could be affecting ED3's financial health. This issue may have been discussed to some extent in  
16   the one-day hearing on April 2, 2009, but ED3's financial health definitely needs to be more  
17   closely scrutinized in light of recent revelations.

18       Exhibit A to this pleading is a copy of an October 16, 2009, article from  
19   TriValleyCentral.com, which also appeared in the *Casa Grande Dispatch*. The article states that  
20   ED3 is dealing with a "perfect storm," caused by the double-whammy of escalating APS electric  
21   rates and the collapsing Maricopa-area economy.

22       Because demand-growth has stagnated, ED3 is struggling with the new APS contract,  
23   which mandates both escalating power costs and increased purchase quantities every year. At  
24   the same time, because it planned for ever-increasing loads, ED3 has now substantially overbuilt  
25   its electrical system. Without the expected customer growth, ED3 is struggling to pay both its  
26   soaring power bills and the debt service on the over-built infrastructure. "Eleven percent of the  
27   current \$50 million ED3 budget is dedicated to those bonds, while a full two-thirds goes into

1 acquiring and distributing electricity.” This means that fully 78% of ED3’s budget is dedicated  
2 to electricity costs and bond interest.

3 Third, as Pinal Energy posited in its previous motions, the escalating APS power bills are  
4 now being passed through to ED3’s residential and business customers. “Those rate hikes have  
5 caused soaring bills for residents and business owners, many of whom took to an Oct. 6 City  
6 Council meeting to express their extreme displeasure.” Again, this issue was examined in the  
7 hearing, but the record is now stale. It now seems clear that transferring APS customers would  
8 see their rates soar.

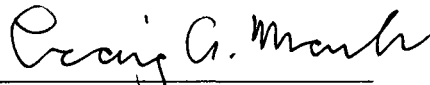
9 Given this perfect storm — much of it caused by the new APS power contract — the  
10 Commission needs to reopen the record to determine whether it should allow APS to cast 4,000  
11 of its customers into the maelstrom. If it does decide to approve the transactions, the  
12 Commission can certainly condition its approval so as to hold customers harmless. As ED3’s  
13 largest customer, Pinal Energy can provide evidence and policy recommendations to help the  
14 Commission determine whether the proposed transfer would be in the public interest.

15 At a minimum, APS should be required to renegotiate the new power contract to hold the  
16 transferring customers harmless, and to help relieve ED3’s extreme financial distress and the  
17 requirements contract’s burdens on its existing customers. Of the parties, APS is in the best  
18 position to provide relief. Exhibit B to this pleading is a copy of an October 29, 2009, article  
19 from the on-line edition of the Arizona Republic. The article states that the quarterly profits of  
20 Pinnacle West, APS’ corporate parent, were \$186.7 million, up 22% from a year ago. At the  
21 same time, ED3 is trying to navigate through a perfect storm and Pinal Energy is struggling to  
22 survive. APS can and should be extending a hand to help ED3 and Pinal Energy, especially  
23 when it already has one hand out to the Commission asking for yet another rate increase.

24 It would not seem to be in APS’ best interest to drive ED3 into bankruptcy, where the  
25 debtor or trustee could elect to reject the requirements contract outright. Nor would it be in the  
26 public interest to force Pinal Energy — one of Arizona’s largest green-energy companies — out  
27 of business, along with 200 jobs.

1 Applicants have offered no reason why the Commission should rush to judgment. It is  
2 clearly in the public interest for the Commission to reopen the record, reevaluate the wisdom of  
3 the overall transaction, and allow Pinal Energy to participate in the docket as an intervenor.

4 RESPECTFULLY SUBMITTED on November 5, 2009.

5  
6   
7

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17 **Original** and 13 copies **filed**  
18 on November 5, 2009, with:

19  
20 Docket Control  
21 Arizona Corporation Commission  
22 1200 West Washington  
23 Phoenix, Arizona 85007  
24

25 **Copy** of the foregoing **mailed**  
26 on November 5, 2009, to:

27  
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29 Hearing Division  
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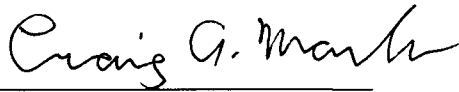
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Maricopa Monitor &gt; Top Stories

**'A perfect storm'**

Print Page

**High-end buy in '08 key culprit in climbing electricity rates**

**By ADAM GAUB**  
**Managing Editor**

Published: Friday, October 16, 2009 8:46 AM MST

A decision to lock up 70 percent of its electricity in March 2008 from Arizona Public Service, just months before the recession took full effect, has shown to be the prime reason for escalating electric bills for customers of Electrical District No. 3.

That decision, ED3 representatives told the Monitor on Tuesday, affected both the pricing for the power, as well as the amount of power requested, as the landowning ED3 board secured a five-year deal at a time when competition for contracts was increasingly fierce.

"We were risk adverse," ED3 general manager Bill Stacy said. "It was just before the bubble came down on the other side... but it's probably been our biggest hurt because it steps up each year."

The cost to customers has increased since then, ED3 utility consultant Jeff Woner said, as the deal with APS increases the amount of power purchased each year, based upon growth projections from the city.

At the time, said ED3 board member and former mayor Kelly Anderson, the district was going off information from the city of 100 new single-family homes being constructed per month.

"We base a lot of our decisions on information from the city," Anderson said of projections that the city has revised to 30 per month for its 2010 fiscal year budget. "We were just kind of out there in the dark."

Woner estimated that average bills are 17 to 20 percent higher today than they were approximately 18 months ago when the deal with APS was inked.

He says not to blame the board, which serves as the controlling body of the district – setting pricing and making decisions on everything from infrastructure improvements to where to purchase power from.

"We've had the perfect storm of higher prices, and lesser sales," Woner said of the drop in anticipated demand hurting the remaining residents. "We had to guess what our needs were going to be."

"This could get worse if the economy worsens."

**Contributing factors**

A power deal that in hindsight seems like a poor decision isn't the sole reason residents and businesses in Maricopa have been feeling an increasing pinch.

ED3 saw customers go from roughly 2,000 at the end of 2003 to nearly 16,000 by the end of 2007, but taper off sharply in the time since then. Conversely, the district has seen the bulk of spending in infrastructure since 2006, with nearly \$80 million put out during the last three years for the construction of new substations, power lines and other items eating the bulk of that cost.

ED3 director of financial services Brett Benedict said the 30-year bonds for those projects are beginning to be paid off by residents. Eleven percent of the current \$50 million ED3 budget is dedicated to those bonds, while a full two-thirds goes into acquiring and distributing electricity.

Benedict also said that up this year are the purchased power cost adjustment rates, or PPCA, which are now based closely off the same model used by APS.

"The PPCA was way under-collecting based on what we'd guessed at the beginning of the year," Woner said, explaining why jumps



Adam Gaub/Maricopa Monitor, A five-year power contract with APS in March 2008 is the primary factor driving high electricity rates in the Maricopa area.

in the PPCA on resident bills have been seen in recent months. A five percent rate increase was seen in July, he said, to compensate for the growing number of vacancies throughout the area.

Also changed earlier this year was how residents are billed for usage.

Previously residents paid a base rate of 11.5-cents per kilowatt-hour for the first 500 kilowatt-hours used and 9.15-cents for each additional kilowatt-hour. However, rates were increased to 9-cents per kilowatt for the first 500 kilowatt-hours and 11.5-cents per kilowatt-hour for any use after that point.

Those rate hikes have caused soaring bills for residents and business owners, many of whom took to an Oct. 6 City Council meeting to express their extreme displeasure.

Penascos co-owner Rosalinda O'Hare told the council a \$2,200 electric bill for the month of September exemplified why she is being stretched to the limit financially.

"It's very difficult to stay in business in Maricopa with the utilities the way they are here," she said. "It seems criminal to me what we are paying."

### **Savings efforts**

Stacy says saving money is a possibility for many residents by utilizing one of the district's two time-of-use plans, which make the cost of electricity "substantially cheaper" in off-peak hours.

One plan places peak times between 9 a.m. and 9 p.m., while another sets them for 12 p.m. to 7 p.m.

ED3 public relations manager Jim Hartdegen said residents can also save on their bills using a variety of cost-savings methods, such as window-tinting and raising thermostats while residents are away from their homes.

The district buys 20 percent of their power from hydro-power sources, with the remaining 10 percent purchased off the open market – which Woner said can either help or hurt customers, depending on the direction the market is taking.

"For the first six months after we were in that (APS) contract, we were dreading buying that 10 percent," he said, as power rates didn't begin to decline significantly until early fall of last year.

Stacy said if growth were to happen mostly in areas where infrastructure is already in place, ED3 could serve nearly double the customers it does now without any significant equipment upgrades.

Into the future, ED3 is looking at a variety of different buying options, and perhaps eventually, being able to produce power of their own, as it spends \$3 million annually in simply bringing the power to the Maricopa area from its various sources.

Any potential cost savings that would bring, couldn't come soon enough for the beleaguered residents – some of whom told the City Council Oct. 6 they were considering leaving the city because of them.

"Senior citizens live on fixed incomes and families are discouraged, hurting and hopeless," said Jim Burgess, who set up a booth at Founders' Day on Saturday to collect petition signatures against ED3, photo radar and proposed Global Water rate increases. "I believe the utility companies are positioned to take advantage of us."

Hartdegen, who wished to remind residents that ED3's nonprofit status prevents it from having to meet profit margins to show to shareholders, defended the decisions of the board.

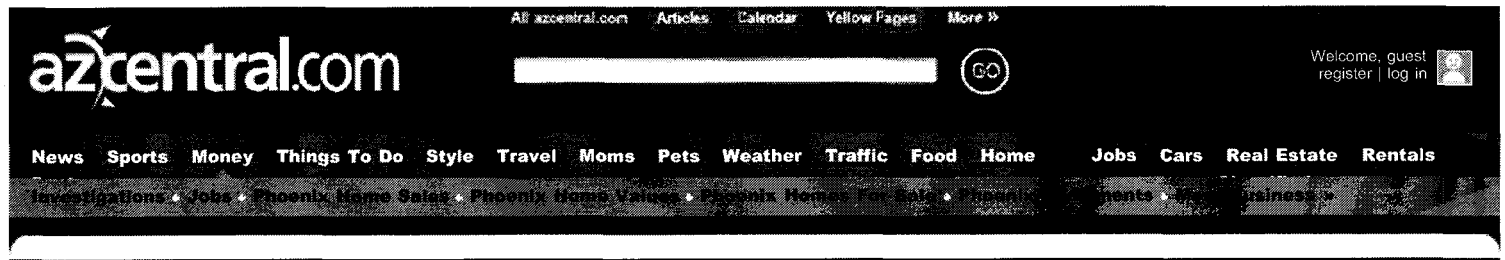
"The board members have the same concerns everyone else does," he said. "They are all landowners and business owners. It's all on their backs, too."

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## Exhibit B



### MONEY

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## Rate increase helps APS boost profits 23%

by Ryan Randazzo - Oct. 29, 2009 02:04 PM  
The Arizona Republic

37 comments

An emergency rate increase and the hottest month ever in the state helped Arizona Public Service Co.'s parent company boost profits 23 percent from July to September, it reported Thursday.

APS still is trying to get a rate hike it applied for in early 2008 approved through the Arizona Corporation Commission, but was given part of the hike on an emergency basis in December.

APS has reached a settlement agreement with 22 customers and stakeholders that intervened in the rate case, and is waiting for a recommended decision from an administrative-law judge, which will be followed by a decision by the five elected Corporation Commissioners.

Including the emergency increase that added about \$2.68 to the average household monthly bill, the full increase would add about \$9 a month to the average bill - more in summer when people use more electricity and less in winter.

Many customers have written or spoken in opposition to the rate hike at hearings, but the only formal opposition is a group that wants APS to reinstate a policy to build 1,000 feet of free line extensions to new customers.

APS officials said reinstating the free lines would require renegotiating the settlement to cover those costs.

"The settlement will provide significant benefits to customers, shareholders and stakeholders alike," CEO Don Brandt said.

Pinnacle West Capital Corp. reported profit of \$186.7 million for the third quarter, or \$1.84 per share, compared with \$151.6 million, or \$1.50 per share, in the same quarter last year.

Revenue hit \$1.08 billion, compared with \$1.04 billion in the third quarter last year.

Analysts predicted earnings of \$1.75 a share on revenue of \$1.07 billion.

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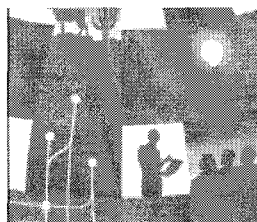
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Part of the increase was attributed to the way fuel contracts are accounted for compared with market prices.

Weather also helped APS earnings.

July was the hottest month on record in Arizona, averaging 98.4 degrees, which pushed customers to use more electricity, even though the state didn't set a record for hottest day or

peak energy demand.

APS measures the effects of weather on energy demand in "cooling-degree days," which account for the average daily temperature and number of days at those temperatures.

The July-September quarter had 2,721 cooling degree days, according to APS, which was 5.2 percent more than normal and 7.4 percent more than last year.

Excluding the effects of weather, APS customers actually reduced their energy use significantly during the quarter, which one analyst said was impressive.

Excluding weather, the average customer used 2.4 percent less electricity during the quarter, with the average residential customer using about 1.4 percent less, according to APS.

"You seem very successful (at energy conservation)," said Paul Patterson, an analyst with Glenrock Associates, to APS executives during a [conference call](#) Thursday.

Brandt said the company anticipates saving much more energy through programs that subsidize the cost of weatherproofing homes.

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**Domino24**

Oct-29 @ 3:13 PM

41

2

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Good news for APS, bad news for those of us who have to pay the price....

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**PhoenixKid21**

Oct-29 @ 4:30 PM

28

5

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(inappropriate term) these utility companies. They should give you a can of vaseline with your bill every month.

While hard working people are struggling to pay their outrageous bills their profits go up 23%.

The economy must be recovering because companies everywhere are back to screwing people over left and right.